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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**STATEMENT AND RESERVATION OF
RIGHTS OF OFFICIAL COMMITTEE OF
UNSECURED CREDITORS REGARDING
DEBTORS' MOTION FOR ENTRY OF
ORDER (I) APPROVING CASE
RESOLUTION CONTINGENCY PROCESS
AND (II) GRANTING RELATED RELIEF**

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric
Company
☒ Affects both Debtors

** All papers shall be filed in the Lead
Case, No. 19-30088 (DM).*

Date: April 7, 2020
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Docket No. 6398

1 The Official Committee of Unsecured Creditors (the “Creditors’ Committee”) appointed
2 in the above-captioned chapter 11 cases submits this Statement and Reservation of Rights in
3 connection with the *Debtors’ Motion Pursuant to 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr.*
4 *P. 9019 for Entry of an Order (I) Approving Case Resolution Contingency Process and*
5 *(II) Granting Related Relief* (the “CRCP Motion”) [Docket No. 6398].

7 **STATEMENT AND RESERVATION OF RIGHTS**

8 The CRCP Motion posits a scenario where the Debtors are unable to confirm and
9 consummate their current Plan by the end of this year. If that scenario occurs, the CRCP Motion
10 requests that the Debtors be authorized, and in fact obligated, to pivot to a sale process¹ that would
11 incorporate a number of protective measures, including the appointment of a Chief Transition
12 Officer (CTO) to oversee certain aspects of the Debtors’ operations and a Chief Restructuring
13 Officer (CRO) to oversee the sale process. CRCP Motion at p. 14-18. The Debtors have agreed
14 (subject to Court approval) to abide by the process and guidelines set forth in the CRCP Motion in
15 order to satisfy the concerns about the Plan that have been articulated by Governor Newsom and
16 his advisors in these proceedings and elsewhere. CRCP Motion at p. 9.

18 The Debtors have only recently begun the solicitation of votes on the Plan, so asking the
19 Court to preemptively approve an alternative path that would only apply if that Plan fails for some
20 reason seems unusual. But these cases are unique, and the Creditors’ Committee acknowledges
21 the critical importance of the Governor’s approval of the Plan and sees the merit in laying the
22

24 ¹ For the sake of brevity, any reference herein to sale process refers to the proposal in the CRCP
25 Motion that “if the Effective Date does not occur by such extended date (December 31, 2020), the
26 Debtors will commence a sale process proposing a sale of either substantially all of the Debtors’ assets
27 or a plan sponsorship proposal that would result in the plan sponsor owning the equity of the
28 Reorganized Debtors or the Reorganized Utility. Such sale would be consistent with the Bidding
Procedures and otherwise in form and substance acceptable to the Governor’s Office. The Bidding
Procedures shall include, among other things, a schedule that allows for the closing of a sale (or
effective date of a plan) no later than September 30, 2021.” CRCP Motion at p. 14.

1 foundation for what is essentially a contingency plan in the event the Plan cannot be consummated:
2 it is critical to assure a successful conclusion of these cases one way or another. At the same time,
3 the Creditors' Committee has a fiduciary duty to general unsecured creditors to seek to maximize
4 their recoveries and a statutory responsibility and right to participate fully in any contingency plan
5 process. In re Mortgage & Realty Trust, 212 B.R. 649, 652 (Bankr. C.D. Cal. 1997) (creditors'
6 committees have a fiduciary duty to maximize the debtor's estate and provide "needed checks and
7 balances in the reorganization process"). The fact that general unsecured creditors may be
8 impaired given the circumstances in which the sale process would occur underscores the need for
9 the Creditors' Committee to be allowed to have complete involvement in the details of the sale
10 process.
11

12 The principal concern of the Creditors' Committee is that the proposed contingency plan
13 should not be used as a means to short-circuit any of the substantive or procedural protections
14 afforded general unsecured creditors under the Bankruptcy Code with respect to actions that a
15 debtor seeks to take while operating in chapter 11 – namely, that any transactions that are beyond
16 the ordinary course of business require Court approval, upon notice and opportunity for a hearing.
17 See 11 U.S.C. § 363(b)(1).
18

19 The CRCP Motion contemplates a number of non-ordinary course actions or transactions
20 that require Bankruptcy Court approval upon notice and opportunity for interested parties to be
21 heard: appointment of the CTO and CRO, the Bidding Procedures, the Auction process, and any
22 ultimate sale. CRCP Motion at pp. 14-18. In particular, the competitive and transparent nature of
23 the sale process contemplated by the CRCP Motion must be assured. For example, any party who
24 seeks to be a bidder in the process should satisfy the applicable criteria to be a "Qualified Bidder."
25 As currently drafted, the Bidding Procedures only provides that the state of California or a bidder
26 supported by the state of California "must participate as a bidder in the process." CRCP, section
27
28

1 (1).

2 The Creditors' Committee also believes it is critical that any process approved by the
3 Bankruptcy Court be nuanced and flexible enough to accommodate any subsequent change in
4 circumstance that may adversely impact the efficacy of the sale process. Said another way, the
5 final process should protect and benefit all creditors while satisfying the concerns of the Governor.
6 For instance, the proposed Bidding Procedures require that, to the extent a sale process takes place,
7 any resulting sale must close or plan of reorganization go effective by September 2021. CRCP,
8 section (1). While such date may be achievable, and efforts should be made to tailor a competitive
9 sale process to such date, it is possible that any required regulatory approval may not have been
10 given by such date. The Court should retain the flexibility to make such adjustments with respect
11 to any final sale process it approves in connection with the Bidding Procedures.
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13
14 In addition, the CRCP Motion provides that, under certain circumstances, plan exclusivity
15 will automatically be lifted for the state of California. CRCP Motion at p. 16 ("exclusivity shall
16 be immediately terminated without further order of the Bankruptcy Court for the state of California
17 ..."). If the Debtors' Plan has failed and plan exclusivity therefore is being lifted for the state of
18 California, that same door should be open for any other party (or parties) that can present a
19 credible, potentially confirmable plan.
20

21 The Creditors' Committee looks forward to working alongside the Governor's advisors to
22 ensure that the Debtors successfully and expeditiously emerge from bankruptcy protection and
23 that, in the event that the process proposed in the CRCP Motion becomes necessary, all protections
24 are afforded to the Debtors' unsecured creditors. Nonetheless, given the prospective nature of the
25 relief requested in the CRCP Motion, the Creditors' Committee reserves all of its rights with
26 respect to all aspects of the any future actions or transactions contemplated by the CRCP Motion,
27 including the appointment and compensation of any CTO and CRO, the commencement and
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1 conduct of any sale process (including the Bidding Procedures and any Auction), any further Court
2 action regarding the Debtors' exclusivity rights, and all related issues.

3
4 Dated: April 5, 2020

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6 **MILBANK LLP**

7 /s/ Gregory A. Bray
8 DENNIS F. DUNNE
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10 GREGORY A. BRAY
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